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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

## Applicant Initiated Interview Request Form

Application No.: 09/996,278 First Named Applicant: Guedalia  
 Examiner: PHAN, Joseph T Art Unit: 2814 Status of Application: Final Rejection

Tentative Participants:  
 (1) Paul D. Sorkin (2) \_\_\_\_\_  
 (3) \_\_\_\_\_ (4) \_\_\_\_\_

Proposed Date of Interview: TBD Proposed Time: TBD (AM/PM)

Type of Interview Requested:  
 (1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated: ☐ YES ☒ NO  
 If yes, provide brief description: \_\_\_\_\_

## Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>102(e)</u>	<u>All</u>	<u>Frerichs '249</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☒ Continuation Sheet Attached ☒ Proposed Amendment or Arguments Attached

Brief Description of Arguments to be Presented: Discuss teachings of Frerichs '249 with respect to network delays and the limitations in the claims

An interview was conducted on the above-identified application on \_\_\_\_\_

**NOTE:** This form should be completed and filed by applicant in advance of the interview (see MPEP § 713.01). If this form is signed by a registered practitioner not of record, the Office will accept this as an indication that he or she is authorized to conduct an interview on behalf of the principal (37 CFR 1.32(a)(3)) pursuant to 37 CFR 1.34. This is not a power of attorney to any above named practitioner. See the Instruction Sheet for this form, which is incorporated by reference. By signing this form, applicant or practitioner is certifying that he or she has read the Instruction Sheet. After the interview is conducted, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible. This application will not be delayed from issue because of applicant's failure to submit a written record of this interview.

/paul d sorkin/

Applicant/Applicant's Representative Signature

Paul D. Sorkin

Typed/Printed Name of Applicant or Representative

39,039

Registration Number, if applicable

Examiner/SPB Signature

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 24 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313 1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## Supplement to Interview Request in Ser. No. 09/996,278

Regarding Frerichs '249

Frerichs does not teach measuring/monitoring a buffer playback rate and measuring/monitoring an audio stream rate to determine if the audio stream is delayed or slowed down in order to determine one or more locations in the stream where an audio segment could be inserted, as recited in the claims.

The "delay" in Frerichs, cited by the Office Action, is caused by, for example, "latency in the network" and this delay is not used to determine where to place the flag that identifies where an ad is inserted. As will be discussed below, this delay due to network latency is irrelevant to determining where the flag and, therefore, the advertisement, is placed in the audio stream.

In order to understand the method 300 of Frerichs cited by the Office Action, one must start at Col. 6, line 57, with reference to Fig. 3 (reproduced below). The portion of Frerichs cited in the Office Action should not be taken out of the context of this method 300 disclosed therein.

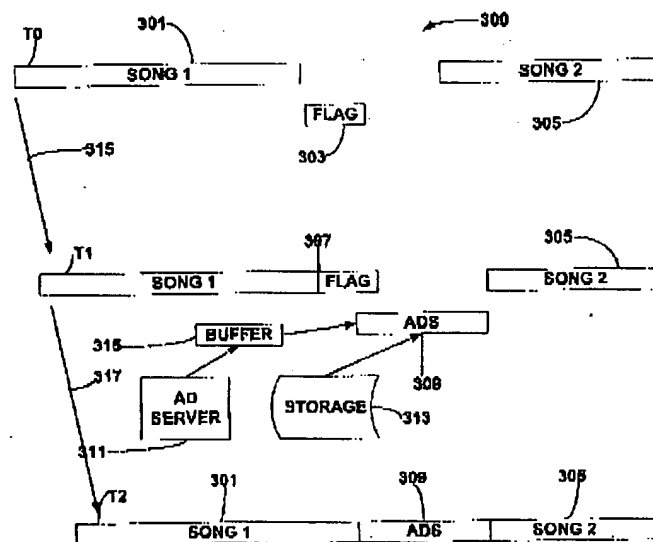


FIG. 3

Accordingly,

At a server location, the method 300 provides first audio data for a first song 301 and second audio data for a second song 305. The first audio data is provided at time  $T_0$ , which is an initial or zero time, as given only for reference purposes. As shown, the method also provides a flag comprising advertisement indication and delay at the server location. The flag is data that indicates where an advertisement is to be inserted. (Col. 6, line 62 - Col. 7, line 2; emphasis added).

Thus, any reference to time  $T_0$  is simply for showing an order of events as time progresses as the stream progresses through the method.

Subsequently,

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~~...the method adds the flag 303 onto first audio data, which is now~~  
between the first song and second song at the server location (or other location). Here, the flag can be provided at the radio station server location. Alternatively, the flag can be provided at a tuning server location or other locations. In most embodiments, the flag is provided onto the first audio data at first time  $T_1$ , where  $T_1 > T_0$ , which signifies a delay 315 between the initial time and the first time. The delay can be caused by a variety of factors such as latency in the network or the like. (Col. 7, lines 26-35; emphasis added).

Accordingly, the flag 303 is added onto the first audio data, i.e., placed in the stream to follow the first song and before the second song. This placement, however, is not determined by the delay  $T_1$  of the network. The delay  $T_1$  is referenced simply to show time clapsing during the operation of the method. At most, the entire stream consisting of the first song, the flag and the second song is delayed, but the placement of the flag in the stream, with respect to the two songs, does not change.

Continuing,

The method monitors the streaming audio for the flag 307. Once the flag has been found, the method inserts the advertisement between the first audio data and the second audio data. The streaming audio data is now ready for output at an audio output device, which is coupled to the client device. (Col. 7, lines 48-53; emphasis added).

and

Next, the method outputs the first song through audio output device. The method output the advertisement through audio output device; and the method output the second song through audio output device. As shown, the first song is outputted at second time  $T_2$ , where  $T_2 > T_0$ , which signifies a delay 317 between the first time and the second time. The delay can be caused by a variety of factors such as latency in the network or the like. The delay also can be selectively caused by way of a buffer or cache and the like. As shown, the streaming audio, which is output, includes first song 301, advertisement 309, and second song 305, which is output in a continuous manner. (Col. 7, line 59 - Col. 8, line 3; emphasis added).

The flag (representing where the advertisement is placed), is in a "fixed" location in the ~~stream, i.e., right behind the first song and before the second song. The flag's location does not~~ change once initially placed. The entire stream consisting of the first song, the advertisement and the second song might not be played until after time  $T_2$ , however, this latency is only referenced to show the passage of time during the method.

There is no teaching or suggestion of measuring/monitoring the playback rate of the stream through the audio output device in order to determine if the audio stream is delayed or slowed in order to determine where to place the ad, as is recited in the present claims. Frerichs sets the flag in the audio stream, which determines that the advertisement is to be played between the two songs, and then sends the stream to the output device. The location of the advertisement in the stream is fixed, irrespective of the rates of the stream or the playback device.

Frerichs is silent as to the situation where, for example, a delay occurs in the network (not due to network latency) and the output buffer runs out of audio stream data to play. Contrary to what is recited in the present claims, as Frerichs is not monitoring/measuring the audio stream rate and the playback rate, there can be no identification of a location in which to place a filler advertisement. Once Frerichs sends the audio stream with the flag or advertisement, it appears that the stream is intended to be played and there is no motivation or need to measure the playback rate in order to fill "dead air" spots.